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for false imprisonment, *Held*, that if S honestly believed the plaintiff had stolen some goods, and acted on that belief, defendant would be liable. *Cobb* v. *Simon* (1903), — Wis. —, 97 N. W. Rep. 276.

It was for the jury to determine from the evidence whether the floorwalker was acting for his employer or had stepped aside from his employment to commit a tort for his own purpose. *Bergman* v. *Hendrickson*, 106 Wis. 434. The merchant owes to customers the positive duty of using ordinary care to keep the premises in a reasonably safe condition for the usual use of customers, and this includes the duty of exercising ordinary care in employing capable, law-abiding servants. This rule is within the general principle that the occupant of premises must use reasonable care for the safety of those who, by his express or implied invitation, go upon the premises to transact business with him. *Hupfer* v. *Nat'l. Distil. Co.*, 114 Wis. 279; *Donaldson* v. *Wilson*, 60 Mich 86, 26 N. W. Rep. 842; *Bennett* v. *Railroad Co.*, 102 U. S. 577, 584, 585; *Carleton* v. *Franconia I. & S. Co.*, 99 Mass. 216. In the absence of any express or implied invitation, the foregoing rule does not apply. *Larmore* v. *Iron Co.*, 101 N. Y. 391, 4 N. E. Rep. 752.

MASTER AND SERVANT—FELLOW SERVANTS—ASSUMED RISKS—INJURIES TO SERVANT WHILE OFF DUTY.—Plaintiff's intestate was a section hand employed by the defendant, and, with others, lived in a section house near the track. The train crews usually cut trains standing in front of the section house so that access to and from the house might be more convenient. After working hours the deceased and other employees left the house to go to the defendant's depot to pass away the evening. While passing between two cars the deceased was caught between the cars and killed on account of the alleged negligence of the train operatives in not giving the deceased warning of their intention to move the cars. In an action against the employer, *Held*, the plaintiff could not recover. *Dishon* v. *Cincinnati, N. O. & T. P. Ry. Co.* (1903), —C. C. E. D. Ky. — 126 Fed. Rep. 194.

The court gives as a reason for the holding that the deceased and the train operatives at the time of the injury were fellow servants, although the injury occurred after working hours. By virtue of the contract of employment it was the right if not the duty, of the deceased to board at the section house; and for this reason it was held that he assumed the risk of the negligence of the train operatives who were operating cars in front of the house. For a collection of authorities relating to injuries to servants while off duty see note to *Ellsworth* v. *Metheney*, 44 C. C. A. 484. The case of *Farwell* v. *Boston & Worcester R. Corp.*, 4 Metc. (Mass.) 49, 38 Am. Dec. 339, is the leading authority on the fellow servant test, i.e. the contract of employment, applied in the principal case. The same rule is applied in the English courts. *Tunney* v. *Midland R. Co.* (1866), L. R. 1 C. P. 291; POLLOCK ON TORTS (6th ed.), 95-100. But this contract test has not been uniformly applied in its full scope in this country. *B. & O. Railroad Co.* v. *Baugh*, 149 U. S. 368, 387; 2 MICHIGAN LAW REVIEW 79 and 492. The principal case is hardly in harmony with *Ellsworth* v. *Metheney*, 44 C. C. A. 484, 104 Fed. Rep. 119, 51 L. R. A. 389; and it is contrary to the decision in *Orman* v. *Salvo*, 117 Fed. Rep. 233, 54 C. C. A. 265.

MINOR'S ENLISTMENT IN THE NAVY—VALIDITY—DESERTION—ARREST—HABEAS CORPUS.—A minor 17 years of age disappeared from the home of his parents in Montgomery, Alabama. His parents had no knowledge of his whereabouts, but it was rumored that he had enlisted in the U. S. army and had gone to Porto Rico. He had, however, without the consent of his father,

enlisted in the United States Navy and been sent to League Island from which place he deserted and returned home, where he was put at work in a cotton factory by his father. While thus at work he was arrested by order of the navy department and the father brings *habeas corpus*. *Held*, where a minor between the ages of 14 and 18 years, without the consent of his father, then living, enlisted in the navy and received the usual pay from the date of his enlistment until after he deserted, was arrested and detained as a deserter, he could not be discharged from custody of the naval authorities on a writ of habeas corpus sued out by his father, though the latter was entitled to demand his son's discharge from the navy as soon as he had answered and satisfied the charges for desertion then pending against him. *United States* v. *Reaves* (1903), — C. C. A. 5th Circ. — 126 Fed. Rep. 127.

The following statutes are involved, Rev. Stat. Sec. 1419, [U. S. Comp. St. 1901, p. 1007] that minors between the ages of 14 and 18 years shall not be enlisted for naval service without the consent of their parents or guardians; Sec. 1420, that no minor under the age of 14 shall be enlisted in the naval service; Sec. 1624, that the U. S. Navy shall be governed by the articles of war. Art. 8. Such punishment as a court martial may adjudge may be inflicted on any person in the navy. This case presents the question which authority, parental or governmental, shall be entitled to the control of a minor who without the consent of the parent has enlisted in the naval service and deserted, when the parent as soon as practicable after he discovers the whereabouts of his son, asserts his authority, and when upon the arrest of the son as a deserter seeks by habeas corpus to regain control of him, thus defeating the right of the government to punish the boy as a deserter. For a time the courts were at variance upon this question, but it was settled in *Morrissey's Case*, 137 U. S. 157, that such enlistment is good as to the minor and voidable only at the instance of the parent or guardian. In *Grimley's Case*, 137 U. S. 147, Grimley sued out the writ while imprisoned asking his discharge on the ground of illegal enlistment, which was denied. In *Kaufman's Case*, 41 Fed. Rep. 876, it was held if he be in the service and take pay as a soldier whether he be properly enlisted or not, if he desert he is liable to be tried and punished by court martial. In *Miller's Case*, 114 Fed. Rep. 838, discharge at the suit of the parents is refused because the minor had assumed the duties of a soldier and hence is amenable to the law. The present case is distinguishable in some respects from all these cases, and from the last in that charges had not been preferred by the navy department when the father brought habeas corpus. Without questioning the validity of the decision it is difficult to see how a contract relation, entered into by one incapable of contracting in this respect by the statute, and whose contracts in so many other respects are voidable at his option can be made the basis of a status that is enforced against an innocent party, the parent, who had never authorized the enlistment. Why should not the parent's disaffirmance of the act when the opportunity offered render the enlistment void ab initio? The decision, however, is placed upon the ground that jurisdiction of the naval courts having fully attached the naval authorities are entitled to the custody of the minor notwithstanding the enlistment was without the consent of the father and voidable at his demand.

REAL PROPERTY—RULE IN SHELLEY'S CASE-WILLS.—A father by will devised certain premises to his son William "to have and to hold said land during the term of his natural life. The fee of the land to pass to his heirs, at his death or at any time before when he shall sell or incumber said land in any manner different than he shall receive it. The intention being to give